IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 554 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FARIDKHAN RASULKHAN QURESHI

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

Mr K G Sheth, APP for the Stat

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/10/2000

CAV JUDGEMENT

The petitioner has preferred this petition under Articles 226, 227, 14 and 21 of the Constitution of India for quashing and setting aside the externment order

passed against the petitioner in Externment Case no.105/99 under section 56 of the Bombay Police Act, 1951 by the Sub-Divisional Magistrate, Mehsana dated 18.2.2000 which was also confirmed in Appeal under section 60 of the Bombay Police Act, 1951 (for short, 'the Act') by the Deputy Secretary, Home Department, Government of Gujarat, Gandhinagar on 20.4.2000. The petitioner above named was externed out of the limits of the areas indicated in the order at Annexure 'A'. The petitioner preferred appeal under section 60 of the Act and there also he failed and therefore, this petition has been filed before this court. The petitioner has contended that it was obligatory on the party of the Sub-Divisional Magistrate to issue notice to him under section 59 of the Act. That there was no notice under section 59 of the Act and, therefore the statutory requirements have been violated and, therefore, the order against the petitioner passed under section 56 of the Act is illegal and consequently, the order in appeal is also illegal. The petitioner has, therefore, prayed to quash and set aside the order.

2. On receipt of the petition, notice was issued at the first instance and thereafter, Rule was issued. Mr K G Sheth, learned APP appears for the State. I have heard the learned Advocates for the parties and have perused the papers.

3. It is an admitted position that the order of externment has been passed under Section 56 of the Act by the sub-Divisional Magistrate, Mehsana in Externment Case No.105/99. It is further an admitted position that before passing such an order, no notice was issued under section 59 of the Act by the respondent to the petitioner. Even the records were verified by the learned APP and he was satisfied that only summons was issued and no notice under section 59 of the Act was issued to the petitioner before passing the order under Section 56 of the Act. It would be worthwhile to consider the provision contained in section 59 of the Act. This provisions say that before an order under section 56 of the Act is passed against any person the officer acting under the said section shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. This shows that a notice as envisaged in section 59 of the Act is a basic requirement and when the notice has not been issued to and served upon the petitioner under section 59 of the Act, the consequential order passed under section 56 of the Act would be illegal. It is more so, when the petitioner was totally unaware as to what

was the allegation against him and what he was required to meet with. Therefore, there was infringement of principles of natural justice also. In the aforesaid view of the matter, the order passed by the sub-Divisional Magistrate, Mehsana under section 56 of the Act without a notice under section 59 of the Act itself is illegal and when the original order is illegal, the order in appeal is also illegal.

4. In view of the aforesaid, the impugned order passed by the sub-Divisional Magistrate is illegal and, therefore, the same is required to be quashed and set aside. In the result, this petition is allowed. The impugned order passed by the sub-Divisional Magistrate dated 18.2.2000 in Externment Case No.105/99 and confirmed in Appeal by order dated 20.4.2000 passed by Dy.Secretary, Home Department, Government of Gujarat, Gandhinagar is quashed and set aside. Rule is made absolute accordingly.

Date:20.10.2000 [D P Buch, J.]

msp